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No. 83-586

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SHELL PETROLEUM N.V.,
Petitioner,
v.

MICHAEL FRANCHETTI, KENNETH CORY,
WILLIAM M. BENNETT, Individually and
as Members of, and GERALD H. GOLDBERG,
Individually and as Executive Officer of,
THE FRANCHISE TAX BOARD, STATE OF CALIFORNIA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AS AMICUS CURIAE

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BRIEF OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

This case presents important questions of interpretation of the Treaty of Friendship, Commerce and Navigation between the Kingdom of the Netherlands and the United States (the "Netherlands FCN Treaty").[1] That Treaty confers important rights, with respect to taxation and other matters, on Netherlands companies engaged (through subsidiaries or otherwise) in trade or other

[1] Treaty of Friendship, Commerce and Navigation, Mar. 27, 1956, United States-Netherlands, 8 U.S.T. 2043, T.I.A.S. No. 3942.

gainful pursuit in the United States, and confers reciprocal rights on U.S. companies similarly engaged in the Netherlands. Netherlands businesses protected by the Treaty, including petitioner Shell Petroleum N.V. ("SPNV"), generate 21 percent of all foreign direct investment in the United States—more than the businesses of any other country except the United Kingdom.[2]

The decision below threatens to vitiate the rights conferred by the Treaty on Netherlands companies by denying the companies the ability to obtain judicial enforcement of those rights, or of their rights under the U.S. Constitution. The Netherlands Government, as one of the two parties to the Treaty, therefore has a significant interest in the disposition of this petition for certiorari.

At the suggestion of this Court, the Department of State has encouraged foreign governments to assert interests of this nature by filing amicus briefs in pending judicial proceedings.[3] The Netherlands Government filed amicus briefs in this case in both of the courts below.

SUMMARY OF ARGUMENT

SPNV's complaint presents, on the merits, an issue of great international importance. That issue is whether a state of the United States may, consistently with applicable treaties, the U.S. Constitution, and international law, apply a "unitary" taxation method to the combined worldwide incomes of a foreign parent company, its U.S. subsidiaries, and all of its foreign subsidiaries. Attempts

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[2] The United Kingdom accounts for 23 percent of foreign direct investment in the United States. *See* Bureau of Economic Analysis, United States Department of Commerce, *Foreign Direct Investment in the United States*, 63 Survey of Current Business 31, 36 (Aug. 1983, No. 8). Until 1982, the Netherlands was the largest source of foreign direct investment in the United States. *See* 62 *id.* at 30-41 (Aug. 1982, No. 8); 61 *id.* at 40-51 (Aug. 1981, No. 8).

[3] *See* Letter from Michael Rodak, Jr. to Wade H. McCree, Jr. (Apr. 17, 1978); Letter from Wade H. McCree, Jr. to Michael Rodak, Jr. (Sept. 6, 1978), in *Zenith Radio Corp. v. United States*, No. 77-539.

by California and a growing number of other states to impose such "upstream" unitary taxation have provoked a storm of diplomatic protests by foreign governments to the Government of the United States.

Last term, the Court expressly reserved the constitutionality of this controversial practice when it decided *Container Corporation of America v. Franchise Tax Board*, which involved only the constitutionality of "downstream" unitary taxation of a U.S. parent company and its foreign subsidiaries.[4] California's attempt to reach "upstream" to the worldwide income of a foreign parent company and its foreign subsidiaries not only raises different, and more difficult, constitutional questions than the "downstream" practice sustained in *Container*; it also raises serious questions under the network of treaties that define the United States' commercial relationships with its principal trading partners—treaties that the U.S. Constitution makes the supreme law of the United States. Because *Container* involved a U.S. parent company, it did not raise those treaty questions.

The courts below ruled that SPNV, which they characterized as a mere shareholder of its U.S. subsidiaries, may not challenge California's application of the unitary tax method to the incomes of SPNV and its over 900 subsidiaries and affiliates operating in over 100 countries throughout the world. Despite the fact that California bases its method on the asserted "unity" of the businesses of the Netherlands parent and its worldwide subsidiaries, the courts below ignored this claimed "unity" when they denied standing to SPNV.

The Netherlands Government submits that, in denying standing to SPNV, the lower courts misinterpreted three provisions of the Netherlands FCN Treaty: the tax provision (article XI), and two provisions (articles I(1) and VI(3)) that impose limits on any type of regulation

[4] 103 S. Ct. 2933, 2952 n.26, 2956 n.32 (1983).

that federal or state authorities may impose on the property, enterprises, or other interests of Netherlands companies. Almost all of the 22 other FCN treaties executed by the United States since World War II contain similar provisions. Thus, the novel interpretation adopted below will prevent companies of many trading partners from enforcing their treaty rights in American courts. And if tribunals in other countries were to follow the lower courts' interpretation, American companies would be equally unable to invoke the treaties to protect their own foreign investments. Some of the most important reciprocal rights established by these treaties, carefully negotiated over decades, would be rendered unenforceable.

The courts below also ruled that the suit is unripe because California's tax authorities have issued only proposed, not final, assessments. But California has maintained constantly for eight years that it may apply the unitary method "upstream" to reach SPNV's income and those of its foreign affiliates; and it has required SPNV's U.S. subsidiaries to produce information about worldwide activities of the foreign affiliates that only SPNV, if anyone, can provide. It is the validity of that application of the unitary method which SPNV seeks to challenge, as a matter of law. Nonetheless, the lower courts refused to adjudicate SPNV's treaty rights because of the pendency of state proceedings in which SPNV may not participate —and in which, according to California, the participating U.S. subsidiaries cannot invoke any rights under the Treaty. If this case is unripe, it is difficult to imagine when or how the treaty issues can be raised in any U.S. forum.

"Upstream" unitary taxation has evoked continuing diplomatic protests from the governments of the Netherlands and other countries. It has already created the prospect of foreign retaliation that would further disturb U.S. foreign relations. The probability that additional states will be encouraged by *Container* to adopt this prac-

tice—as Florida has already done—makes timely resolution of the standing of foreign companies to contest the tax especially important.

ARGUMENT

In recent cases involving unitary taxation, this Court has considered the increasingly imaginative efforts of some states of the United States to widen the net by which income earned by affiliated companies in foreign countries can be caught and included in the tax base to which a state apportionment formula is applied.[5] Last Term, in *Container Corporation of America v. Franchise Tax Board*,[6] the Court held that the Constitution does not forbid a state to apply unitary taxation "downstream" to reach the income earned abroad by the foreign subsidiaries of a U.S. parent company.

The Court in *Container* expressly reserved decision on the constitutional validity of applying the unitary method to the very different situation where the parent company is foreign.[7] To apply the unitary approach "upstream" means that the tax is based on income that is not owned either directly or indirectly by the only companies subject to the taxing state's jurisdiction—the U.S. subsidiaries. Three dissenting Justices stated that such an application of the California unitary method would violate the Constitution. They noted that "upstream" application of the unitary method has elicited repeated objections from major trading partners of the United States.[8]

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[5] *See Container Corporation of America v. Franchise Tax Board*, 103 S. Ct. 2933 (1983); *F.W. Woolworth Co. v. Taxation & Revenue Department*, 102 S. Ct. 3128 (1982); *ASARCO Inc. v. Idaho State Tax Commission*, 102 S. Ct. 3103 (1982).

[6] 103 S. Ct. 2933 (1983).

[7] 103 S. Ct. at 2952 n.26, 2956 n.32.

[8] *Id.* at 2960 n.4 (Powell, J., dissenting).

Those objections have been renewed in the wake of the *Container* decision.[9]

The Court in *Container* recognized that the "accepted international practice" is to apply the "arm's length" method of taxation, and that California's unitary approach is a "serious divergence" from that standard.[10] The Netherlands Government, a party to the Netherlands FCN Treaty, believes that the Treaty (which is binding on the states of the United States) incorporates the internationally accepted arm's length principle of taxation with respect to domestic subsidiaries of foreign companies.[11] California's use of a contrary method is inconsistent with the Treaty.

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[9] The Court decided *Container* on June 27, 1983. On August 1 the 10 governments of the European Community delivered a diplomatic note to the U.S. Government renewing their objection to the "upstream" application of the unitary tax. Similar objections were voiced in correspondence from the Netherlands Government on August 17, the Japanese Government on August 11, the Canadian Government on August 23, and the British Government on September 6. On September 15 the Netherlands Government delivered a diplomatic note urging the U.S. Government to support SPNV's petition for certiorari in this case. These communications are reproduced in Annex A to this Brief (except for the correspondence from the British Government, the text of which has not been made public). *See Tax Policy: Reagan Delays Decision on Cabinet Council Options to Solve Unitary Tax Dilemma*, Taxation & Accounting Rep. (BNA) No. 178, at G-3 (Sept. 13, 1983).

[10] 103 S. Ct. at 2951-52.

[11] U.S. commercial treaties in general, and the FCN treaties in particular, bind American states and localities as well as the federal government. *See, e.g., Nielsen v. Johnson*, 279 U.S. 47 (1929); *Deutsche Lufthansa AG v. City of New York*, 85 Misc. 2d 719, 379 N.Y.S.2d 635 (Sup. Ct. 1976) (West German FCN Treaty). *See generally Missouri v. Holland*, 252 U.S. 416 (1920). In this respect, the commercial treaties differ from U.S. double-taxation treaties, which by their terms apply in most respects only to federal income taxation. *See, e.g.*, Convention with Respect to Taxes on Income and Certain Other Taxes, April 29, 1948, United States-Netherlands, 62 Stat. 1757, T.I.A.S. No. 1855.

The U.S. double-taxation treaties do not supersede or override the tax provisions of the FCN treaties. Indeed, the Netherlands

SPNV's complaint below squarely presented the "upstream" issue. SPNV contends that California violated its rights under articles I(1), VI(3), and XI of the Netherlands FCN Treaty by basing the taxes imposed on SPNV's two U.S. subsidiaries (Shell Oil Company and Scallop Nuclear Inc.) on the combined worldwide incomes of SPNV and its over 900 affiliates. SPNV also claims that the burdensome information demands made by California violate the same treaty provisions. The provisions SPNV invokes all expressly protect "companies of" the Netherlands, which SPNV plainly is. SPNV also contends that California's practice violates the Constitution and customary international law.

The district court did not consider the merits of SPNV's contentions. Rather, it ruled that SPNV lacks standing to obtain an adjudication of the validity of California's practice under the Treaty (or the Constitution or international law). It ruled also that the action was unripe because California's tax authorities had not issued final assessments against the U.S. subsidiaries. The court of appeals affirmed both aspects of the district court's decision.

Unless reversed, the decisions below may render important treaty provisions unenforceable. Twenty-one of the United States' 23 modern FCN treaties, including the Netherlands FCN Treaty, purport to grant rights to com-

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FCN Treaty, like some others, was entered into *after* the counterpart double-taxation treaty. Therefore, it is clear that the provisions of the FCN Treaty should be given independent effect where they go beyond those of the double-taxation treaty, as they do in applying fully to the states. *See* Convention with Respect to Taxes on Income and Certain Other Taxes, April 29, 1948, United States-Netherlands, 62 Stat. 1757, T.I.A.S. No. 1855; Treaty of Friendship, Commerce and Navigation, Mar. 27, 1956, United States-Netherlands, 8 U.S.T. 2043, T.I.A.S. No. 3942.

panies of the foreign treaty party in the United States and to U.S. companies in the opposite situation. If those companies lack standing to invoke the very provisions that expressly protect them, the provisions may be meaningless. The lower courts' refusal to adjudicate SPNV's rights should be reviewed promptly because of the importance of the enforceability of these treaties, as well as the foreign relations impact of the tax practice that underlies SPNV's complaint.

I. By Denying the Right of a Company of the Netherlands to Invoke the Netherlands FCN Treaty, the Decision Below Eviscerates that Treaty and 20 Similar Treaties with Other Nations

This Court has never been asked to decide whether a foreign company has standing under an FCN Treaty to challenge a state's conduct as inconsistent with the treaty.[12] The express language of the treaties appears to provide a clear affirmative answer to that question. By arriving at a negative answer, the lower courts have created an important issue warranting review in this Court.

Each article of the Treaty invoked by SPNV expressly protects "companies of" the Netherlands.[13] There is no dispute that SPNV is such a company. And the lower courts recognized that SPNV has alleged injury in fact sufficient to satisfy the constitutional test for standing.[14]

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[12] In *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982), the Court held that a U.S. subsidiary of a Japanese company was not a "company of" Japan for purposes of the Japanese FCN Treaty. This case, unlike *Sumitomo*, concerns the rights of the foreign company itself, not of its U.S. subsidiaries.

[13] The pertinent provisions of the Treaty are set forth in Annex B to this Brief.

[14] *See* Pet. App. at 3a, 16a n.6.

Nonetheless, they denied SPNV standing as a prudential matter, on the ground that a domestic company that owned a comparable interest in Shell Oil or Scallop Nuclear would not have standing in similar circumstances.

That ruling has three crippling effects on the Treaty. First, it reduces the Treaty, and the 20 similar post-war FCN treaties, to ones granting only national treatment to companies of the treaty parties. The provisions relied on by SPNV plainly provide more than national treatment. They establish absolute standards of treatment of Netherlands and U.S. companies by the other treaty party, which are not defined by reference to the constitutional or statutory rights of domestic firms. Article XI(4) forbids taxation of income not "reasonably allocable" to the taxing jurisdiction; and articles I(1) and VI(3) prescribe "fair" and "reasonable" treatment. In addition, article XI(3) entitles Netherlands companies to most-favored-nation treatment—that is, the most favorable treatment the United States or any of its states grants to the companies of any third nation, even if more favorable than that granted to U.S. companies. SPNV relied on article XI(3) to invoke the substantively similar, but more precisely worded, anti-unitary tax provisions of the French FCN Treaty.[15] To dismiss SPNV's complaint because (in the lower courts' view) a U.S. company could not sue in similar circumstances is to deny any effect to these provisions. Equally vitiated are the reciprocal provisions that, for example, entitle U.S. firms to just compensation for the expropriation of property, whether or not such compensation is provided to companies of the expropriating treaty party under its own laws.[16]

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[15] Convention of Establishment, Nov. 29, 1959, United States-France, art. IX(4), 11 U.S.T. 2398, 2409-10, T.I.A.S. No. 4625.

[16] Netherlands FCN Treaty art. VI(4), 8 U.S.T. at 2051.

Second, the ruling below, in conjunction with this Court's *Sumitomo* decision,[17] may effectively prevent any affected party from litigating the validity of California's practice under the Treaty. Respondents and the lower courts interpret *Sumitomo* to preclude the U.S. subsidiaries from presenting claims based on the Treaty, because they are not "companies of" the Netherlands. Yet SPNV, because it is not the nominal taxpayer in California, is barred from participating in the state administrative or judicial proceedings concerning the taxes on its subsidiaries.[18] If SPNV may not assert its treaty rights by a suit in federal court, the result is a Catch-22 situation in which no entity may invoke the protections the Treaty purports to confer on Netherlands investments and enterprises in the United States.[19] A similar interpretation of the Treaty by Netherlands tribunals would leave American companies and their subsidiaries in the Netherlands equally unable to invoke the Treaty's protections.

Third, the lower courts' interpretation imports into the Treaty an unwarranted discrimination between the different forms of gainful pursuit in which a Netherlands company may engage within the United States. The district court acknowledged that, under the ruling below, a Netherlands company would have standing to challenge U.S. treatment of its interests only if it transacted business in the United States through an unincorporated branch office, rather than through a subsidiary.[20] But

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[17] *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982).

[18] *See Capitol Industries-EMI, Inc. v. Bennett*, 681 F.2d 1107 (9th Cir.), *cert. denied*, 455 U.S. 943 (1982).

[19] Even the Government of the Netherlands could not sue the State of California for violating the Treaty without California's consent. *See Monaco v. Mississippi*, 292 U.S. 313 (1934).

[20] Pet. App. at 18a-19a.

article VII(1) of the Treaty makes plain that both forms of investment are permissible and entitled to the protections of the Treaty.[21] Local subsidiaries are by far the dominant form of foreign direct investment by Netherlands companies as well as U.S. companies.[22] The Treaty and the 20 similar FCN treaties can scarcely achieve their reciprocal objectives if they give no protection to that form of investment.

By giving controlling significance to the separate identities of SPNV and its U.S. subsidiaries in this context, the lower courts have produced a logically untenable result. The very justification for California's "upstream" unitary approach is its assertion that the worldwide Royal Dutch/Shell companies, including SPNV, are a unitary enterprise, justifying the negation of their separate identities. Yet both the Netherlands parent and its U.S. subsidiaries are denied standing to challenge that unitary approach under the Treaty because of their separateness from one another.

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[21] Article VII(1) provides in pertinent part:

"[C]ompanies of either Party shall be accorded national treatment with respect to *engaging in all types of* commercial, industrial, financial and other *activity for gain* (business activities) within the territories of the other Party, *whether directly or by agent or through the medium of any form of lawful juridical entity*. Accordingly, such nationals and companies shall be permitted within such territories: (a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business; (b) *either directly or indirectly* through one or more intermediaries, *to organize companies under the general company laws of such other Party* . . . ; (c) to control and manage enterprises which they have established or acquired." (Emphasis added.)

[22] *See* Bureau of Economic Analysis, United States Department of Commerce, *U.S. Direct Investment Abroad*, 62 Survey of Current Business 11 (Aug. 1982, No. 8); *Foreign Direct Investment in the United States*, *id.* at 30, 31.

The courts below seemed to think that, because California's measures are directed nominally at the U.S. subsidiaries, which they held have no treaty rights, SPNV is suffering no infringement of its own treaty rights. But to treat the legal incidence of the tax as a talisman denies SPNV, the "upstream" parent, the right to show that *its* income from sources elsewhere in the world is being subjected to double taxation—once in the countries of origin and again in California by virtue of the unitary approach. And it ignores the fact that the information demands, backed by a penalty for noncompliance, call for information that the U.S. subsidiaries do not possess and can produce only if SPNV is able to assemble it from non-U.S. sources and supply it to the U.S. subsidiaries. If SPNV asserts a treaty right not to supply the information, the $8 million in penalties levied against the subsidiaries will appear directly on the consolidated financial statements of the Royal Dutch/Shell companies as a decrease in their net worth.

This Court in *Container* recognized that, in the case of a foreign parent company with U.S. subsidiaries, these considerations of practical substance may prevail over legal forms:

> "[T]he fact that the legal incidence of a tax falls on a corporation whose formal corporate domicile is domestic might be less significant in the case of a domestic corporation that was owned by foreign interests." [23]

The rulings below are blind to these considerations.

Moreover, the impact of the ruling goes far beyond taxation. Although Article XI applies only to taxation, articles I(1) and VI(3) govern all types of government regulation. If SPNV cannot invoke those provisions, California and other states may be free to take any kind of

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[23] 103 S. Ct. at 2956 n.32.

discriminatory or confiscatory action against SPNV's subsidiaries, despite the express prohibition in article VI(3), for example, of "unreasonable or discriminatory measures that would impair the rights or interests within [U.S.] territories of nationals and companies of [the Netherlands,] whether in their capital, or in their enterprises and the property thereof . . . ." It is difficult to imagine what remains of these important reciprocal treaty protections when no injured person has standing to invoke them in the treaty party's national courts.[24]

The impact also goes beyond Netherlands companies. As this Court has noted, the Netherlands FCN Treaty is "one of a series of similar commercial agreements negotiated after World War II." [25] The United States is a party to 22 other such treaties, 20 of which contain provisions identical or substantially similar to the articles invoked here.[26] Each of those treaties is as vulnerable as the Netherlands treaty to the rationale of the ruling below. If the ruling below stands, there is a danger that the courts of the other treaty parties will reciprocate if an American company invokes their protection against a claimed treaty violation. The treaty fabric woven by the United States and its trading partners to provide mutual protection for investments is thus seriously weakened. This broad impact of the rulings below increases the appropriateness of review by this Court.

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[24] *Cf. Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 136 (1968) (granting certiorari "[b]ecause these rulings by the Court of Appeals seemed to threaten the effectiveness of the private action as a vital means for enforcing the antitrust policy of the United States").

[25] *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. at 185 & n.13.

[26] Annex C to this Brief lists the comparable provisions of other post-war U.S. FCN treaties.

II. The Decision Below Prevents Prompt Resolution of the International Controversy over "Upstream" Unitary Taxation and Conflicts with this Court's Decision in *McCulloch v. Sociedad Nacional de Marineros de Honduras*

The claims in SPNV's complaint are ripe in every practical sense. It is undisputed that SPNV will suffer injury in fact, sufficient under Article III of the Constitution, from California's actions. The state tax proceedings are already eight years old, and the facts necessary and sufficient for adjudication of the complaint will not change: California has insisted since 1975 that it is entitled to apply its unitary tax method "upstream" to reach the incomes of SPNV and its worldwide affiliates; and SPNV asserts that the Treaty forbids such tax treatment. This purely legal issue—dispositive of the controversy—has been joined, and further state proceedings cannot aid in its resolution. To refuse to adjudicate SPNV's treaty rights because of the pendency of state proceedings in which SPNV cannot participate—and in which, according to California, *Sumitomo* bars the subsidiaries from invoking the Treaty—would impose hardship for no constructive purpose. The case is thus ripe under this Court's controlling decisions.[27]

Moreover, this Court has established that possible disruption of foreign relations weighs heavily in favor of ripeness. In *McCulloch v. Sociedad Nacional de Marineros de Honduras*,[28] the Court held that a federal district court has jurisdiction *before* completion of agency proceedings to determine whether the agency is exceeding its power, where the controversy over the agency's power "has aroused vigorous protests from foreign governments and

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[27] *See Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967); *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, 103 S. Ct. 1713 (1983).

[28] 372 U.S. 10 (1963).

created international problems for [the U.S.] Government." [29]

California's attempted "upstream" application of its unitary method has been the subject of repeated diplomatic protests from other governments since 1979.[30] The Netherlands Government and the Japanese Government have also voiced their concern by filing briefs as amici curiae in the proceedings below. The Netherlands Government has repeatedly stressed its concern over the unitary taxation method during its efforts to negotiate a new convention with the United States on double taxation at the national level. And retaliatory legislation was recently proposed in the British Parliament.[31] The controversy may be exacerbated as additional states, encouraged by the *Container* decision, move to adopt the unitary approach without distinguishing between "downstream" and "upstream," [32] and as additional foreign countries

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[29] *Id.* at 16-17.

[30] The most recent communications are listed in note 9 above and reproduced in Annex A. Earlier protests against unitary taxation were made to the U.S. Government by the Netherlands Government (September 18, 1979, and May 22, 1981), all governments of the European Community acting together (March 19, 1980, October 30, 1981, and June 29, 1982), and the British Government (December 17, 1981). *See* Pet. App. at 54a-89a.

[31] Notice of Amendment to 1983 Finance Bill to Amend the Income and Corporation Taxes Act 1970, § 497, tabled in the House of Commons July 14, 1983 (denying tax credit to U.S. corporations established, or with affiliates established, in a state employing unitary taxation).

[32] Before *Container*, ten states applied unitary taxation on an "upstream" worldwide basis—Alaska, California, Colorado, Idaho, Massachusetts, Montana, New Hampshire, North Dakota, Oregon, and Utah. Less than three weeks after *Container*, Florida enacted a similar system. Florida Senate Bill 3C (adopted July 12, 1983). One Florida legislator was quoted as saying that "It was like finding money on the street, and we grabbed it." *Florida's Legislature Is Latest to Approve Unitary Tax Law*, Wall St. J., July 19, 1983, at 29, col. 1.

consider retaliatory action.[33] The importance of the controversy to both state and foreign governments is a compelling reason for this Court to resolve promptly the questions presented by SPNV's petition.[34]

The U.S. Government has recognized the significance of the controversy. In a brief it submitted as amicus curiae in *Chicago Bridge & Iron Co. v. Caterpillar Tractor Co.*, that government expressed its concern that worldwide combination and apportionment undermines its ability to "speak with one voice when regulating commercial relations with foreign governments" and indicated that in the "upstream" situation the method may violate some FCN treaties.[35]

These circumstances present "compelling justification for prompt judicial resolution of the controversy over the Board's power," as this Court said in *McCulloch*.[36] The court of appeals did not even discuss *McCulloch*, although the case was called to its attention. Its ruling should be reviewed to correct an inconsistency with a controlling decision of this Court.

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[33] The British Prime Minister recently was quoted as stating that foreign retaliation "could fundamentally undermine investment in other countries, and the people who would suffer most damage would be those who have the most multinational companies." *Reagan's Delay on Unitary Tax Is Victory for States but May Spark Trade Problems*, Wall St. J., Sept. 26, 1983, at 8, col. 2.

[34] *Cf. McGee v. International Life Insurance Co.*, 355 U.S. 220, 221 (1957) (granting certiorari because case "raised important questions, not only to California but to other states which have similar laws").

[35] Memorandum for the United States as Amicus Curiae at 3, 16-17, *Chicago Bridge & Iron Co. v. Caterpillar Tractor Co.*, No. 81-349 (U.S. Jan. 14, 1982) (*quoting Michelin Tire Corp. v. Wages*, 423 U.S. 276 (1976)). Nine days after the *Container* decision, this Court dismissed the appeal in *Chicago Bridge* for lack of a substantial federal question. 51 U.S.L.W. 3937 (U.S. July 6, 1983).

[36] 372 U.S. at 17.

CONCLUSION

For these reasons, the Netherlands Government respectfully submits that this Court should grant the writ of certiorari. The Netherlands Government also respectfully concurs in SPNV's suggestions:

1) That the Court may wish to consider requesting the Solicitor General to express the views of the United States on whether the petition should be granted; and

2) That, if the petition is granted, the Court may wish to consider requesting the parties to brief and argue the questions whether the application of the California unitary tax to the U.S. subsidiaries of SPNV violates the Netherlands FCN Treaty and the Constitution.[37]

Respectfully submitted,

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WILLIAM T. LAKE
ROBERT M. POZIN
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1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000
Counsel for the Government of the Kingdom of the Netherlands as Amicus Curiae

October 17, 1983

* Counsel of Record

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[37] *See Capital Cities Cable, Inc. v. Crisp*, No. 82-1795, 52 U.S.L.W. 3262 (U.S. Oct. 3, 1983); *Buckley v. Valeo*, 424 U.S. 1, 9-10, 113-18 (1976); *Doe v. Bolton*, 410 U.S. 179, 187-88 (1973); *Times Film Corp. v. City of Chicago*, 365 U.S. 43, 44-45 (1961).

ANNEXES

ANNEX A

DIPLOMATIC CORRESPONDENCE CONCERNING UNITARY TAX

EMBASSY OF GREECE
Washington, D.C.

The Embassy of Greece presents its compliments to the Department of State and, on behalf of the Ten European Community Governments, of which the Government of Greece has now the presidency, it has the honor to forward the attached Note on the problems of the unitary method of taxation.

The Embassy of Greece welcomes the opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C., August 1, 1983

Attached: Note

The Department of State
Washington, D.C.

[SEAL]

UNITARY TAXATION

I. Our governments refer to their note on unitary taxation forwarded to the Department of State by the Embassy of Belgium on 29 June 1982.

II. That note drew the attention of the State Department to the case before the Supreme Court of the Container Corporation of America versus the California Franchise Tax Board and urged as a matter of high priority that the government of the United States should participate in that case as amicus curiae. The decision was handed down by the court on 27 June, 1983, and the court found that application of the unitary business principle by the State of California to Container Corporation and its foreign subsidiaries was proper. A majority of justices held that that fact that no brief had been submitted on behalf of the United States government meant there was no indication that the position taken by the government in the case of the Chicago Bridge and Iron Company still represented its views or that the brief in the Chicago Bridge case applied to the Container case.

III. Although the Supreme Court decision did not apply to US companies with foreign parents, our governments were disappointed by the Container decision. They remain convinced that the unitary basis of taxation with combined reporting, particularly as applied in the international field, is unsatisfactory. Our governments therefore urge that the United States government should give strong support to legislation to ensure that States do not use that method of taxation at least for the subsidiaries of foreign corporations. There are currently two relevant bills in Congress, HR 2918 and S. 1225.

IV. It is particularly important that federal legislation should be adopted at an early stage since there are already signs that, following the decision in the Container case, other American States not at present using this method are contemplating worldwide combined reporting.

[SEAL]

Minister
Van
Financien

Nr. 083-2055

The Honorable Donald T. Regan
Secretary to the Treasury
Washington, D.C. 20220
United States of America

Dear Mr. Regan,

I am writing you on the subject of unitary taxation. Recently the United States Supreme Court delivered its decision in the case of Container Corporation of America v. The California Franchise Tax Board, upholding the right of a state to use worldwide formula apportionment to internationally operating companies.

The decision of the Supreme Court was received with dismay in my country. The method of unitary taxation inevitably leads to double taxation and entails an unduly heavy administrative burden especially for foreign enterprises holding U.S. companies. It has been mentioned to me that a severe budgetary loss for the states concerned would arise if worldwide apportionment were to be abolished and arm's length taxation restored. It should be borne in mind however that this implicitly means that a major part of that amount represents double taxation. Unitary taxation neglects differences in economic circumstances and adds together the results of different activities which almost certainly will have different degrees of profitability. Furthermore this method apportions part of the worldwide profit of an enterprise to a state even if the activities in that state have only produced losses. A striking example of this situation is at hand in the case of Shell Petroleum N.V. v. Mary Ann Graves (The California Franchise Tax Board) where a profit of about $40 million is apportioned to a U.S. sub-

sidiary engaged in non-oil related business, whereas that subsidiary has accumulated a loss of about $390 million over the taxable years concerned.

I would like to draw your attention to another consideration. The matter of unitary taxation has gained much attention among tax authorities throughout the world.

I fear that it is very tempting especially for less developed and other countries in urgent need of revenue to follow the Californian example and adopt this method which only requires the application of a simple formula to worldwide figures of multinational enterprises.

For the Netherlands Government the issue of unitary taxation has been of great concern for a considerable period of time as you may be aware. During the negotiations on the revision of the double taxation convention between our countries it has repeatedly been stressed that it is an anomaly to discuss the matter of avoidance of double taxation when—as a result of the unitary method—double taxation remains an inevitable consequence of operating a business within the territory of the partner to the convention.

Finally, Mr. Secretary, the Netherlands has for a long time had the impression that the Federal Government of the United States shares its concerns about the effects of unitary taxation. The filing of an amicus curiae brief by the U.S. Government in the case of Chicago Bridge and Iron v. Caterpillar was viewed in that light. However, no brief of amicus curiae was filed in the Container case. Now that the U.S. Government, as I understand, is considering its position towards the use of unitary taxation by states, I would urgently request you to take, or to support, any initiative which may put an end to this impediment to international trade.

Yours sincerely,

/s/ H. O. Ruding
H. O. RUDING

Embassy of Japan
Washington

August 11, 1983

Aide-Memoire

Re: The Unitary Tax System

The Government of Japan wishes to present to the U.S. Government agencies concerned the following views with regard to the Unitary Tax System.

The Unitary Tax System, which has been introduced in California and many other states of the U.S., has put a serious burden and constraint on the management and business activities of Japanese-affiliated companies operating in the U.S. We regard the Unitary Tax System as having the following problems:

—It has been causing international double taxation.

—It requires financial and other documents from the companies concerned, which include not only those of the parent company, but of other affiliated companies all over the world, and thus has imposed a tremendous burden on them.

—It has a discouraging effect on Japanese investment in the U.S., and hampers the sincere efforts by the U.S. and Japanese Governments to actively promote Japan-U.S. investment.

Based on this recognition, the Japanese Government has taken every opportunity to raise this question in such fora as the Japan-U.S. sub-cabinet level meeting and Japan-U.S. Trade Subcommittee, and requested the U.S. Government to take appropriate measures as soon as possible to abolish the Unitary Tax System.

On June 27th, the U.S. Supreme Court decided in the Container Corp. of America *vs* Franchise Tax Board Case, that the Unitary Tax System based upon the world-

wide profits of the company concerned, including those of the overseas affiliated companies, is constitutional. Although the Court decision was not on a case in which the head office is located abroad, we are concerned that the decision would encourage a number of states to newly introduce the Unitary Tax System or discourage the states which already have the System from abolishing it. We wish to reiterate that Unitary Taxation can be a barrier to the expansion and development of Japan-U.S. economic relations, including the promotion of our direct investment.

The Government of Japan, attaching great importance to the U.S. Supreme Court decision of June 27th, again expressed concern over this matter in the Japan-U.S. Trade Subcommittee meeting held this July at Wye Plantation, Maryland. We were encouraged to hear the U.S. Government explain that it is ready to present an amicus curiae brief in cases where diplomatic implication is involved. The Government of Japan strongly wishes that the U.S. Government will support the motion for rehearing, present the amicus curiae brief in connection with the rehearing of this case, and also take the same appropriate measures in connection with other individual cases. The Government of Japan further requests that the U.S. Government take concrete measures as soon as possible, including possible legislative actions, which will lead to the abolition of the Unitary Tax System.

Canadian Embassy [SEAL] Ambassade du Canada

1746 Massachusetts Avenue N.W.
Washington, D.C. 20036-1985

23 August 1983

The Honourable James A. Baker III
Chief of Staff and Assistant to the President
The White House
Washington, D.C. 20500

Dear Mr. Baker,

I am writing to you to flag the Canadian Government's concern regarding the unitary tax issue.

In the recent case of Container Corporation vs. the California Franchise Tax Board, the United States Supreme Court upheld the ability of a state government to levy taxes based on the worldwide earnings of multinational corporations. This method of taxation is inappropriate in the view of the Canadian Government because it places business corporations in the position of potentially having to pay tax in one jurisdiction for profits earned (and taxed) elsewhere. In addition to being contrary to good business practice, it constitutes an unnecessary and unfortunate intervention into taxing areas which should belong to the jurisdiction in which a corporation is actually doing business.

The Canadian Government view, which is expressed in the attached copy of a letter to Secretary Regan from Marc Lalonde (the Canadian Finance Minister) is that the United States should take appropriate steps to have state governments drop the unitary method of taxation before it grows to become a major stumbling block to international business and a serious foreign relations problem.

We have, of course, made our views known to several of the members of the Cabinet Council on Economic Affairs interagency working group which is developing an Administration position on this matter. However, I wanted to reinforce the seriousness which we attach to this issue by also drawing it to your attention.

Yours sincerely,

Allan Gotlieb
Ambassador

The Honourable Donald T. Regan
Secretary to the Treasury
Washington, D.C.
U.S.A. 20220

Dear Mr. Secretary:

I have recently had drawn to my attention the decision in the case of Container Corporation of America vs the California Franchise Tax Board in which the United States Supreme Court upheld the right of a state to use the unitary method of taxing corporate income.

The unitary method of taxation is a cause of considerable concern to a number of Canadian-based multinational corporations. Their concern arises out of three main considerations. First, the unitary method, by applying an arbitrary allocation formula to the consolidated world earnings of a corporate group, departs from the generally accepted international norm for determining the geographic source of income for tax purposes and gives rise to a serious potential for double taxation. Second, the costs of compliance arising out of the need to prepare consolidated returns that conform to the state tax accounting requirements are particularly onerous for Canadian and other foreign-based companies. Third, there is a concern that the sanction of the unitary method will result in its adoption by an increasing number of states and, possibly, by certain foreign countries as a means of increasing their tax revenues.

I understand that you have indicated recently that you were giving consideration to possible legislative initiatives as a result of the Supreme Court decision. I recognize that the issues involved are both complex and sensitive, but the application of the unitary method of taxation to the foreign source income of non-U.S. companies poses difficult problems for a large segment of the international business community. My purpose in writing is

to emphasize the seriousness of those problems and to encourage you to give urgent consideration to the ways in which they might be resolved.

With all good wishes and kind regards.

Sincerely,

Marc Lalonde

[SEAL]

EA-9639 Encl.

The Ambassador of the Netherlands presents his compliments to the Honorable the Secretary of State and has the honor to request Mr. Shultz's kind attention to the following:

In previous correspondence the Netherlands Government has presented to the Secretary of State its concerns about the "unitary" method of taxation that is being applied by the State of California to Shell Oil Company and Scallop Nuclear Inc., which are U.S. subsidiaries of Shell Petroleum N.V. ("SPNV"), a company of the Netherlands. In particular, the Netherlands Government objected to the State of California's applying its apportionment formula to the combined incomes of SPNV and its more than 900 subsidiaries and affiliates worldwide. The Netherlands Government expressed its view that this unitary tax approach, and the demands for information asserted in connection with it, are in conflict with the provisions of the Treaty of Friendship, Commerce and Navigation between the Netherlands and the United States of 1956 ("the Treaty"), and with general principles of international law.

In his note forwarded to the Netherlands Embassy on April 24, 1980, the Secretary of State advised that the Department of State would follow the case and would be pleased to consult with the Embassy at any opportune moment in the event that additional questions arose.

The Netherlands Government now wishes to bring to the attention of the Secretary of State important additional developments that seriously undermine the enforceability of the Treaty, in the tax area and other areas as well. On November 4, 1981, SPNV filed suit in the U.S. District Court for the Northern District of Cali-

fornia challenging California's unitary approach on the grounds, among others, that it conflicts with the Treaty and with general principles of international law, and also violates the Constitution of the United States. The Netherlands Government submitted a memorandum as *amicus curiae* stating its view that unitary taxation of a Netherlands-based multinational enterprise is in conflict with the Treaty and international law.

The district court did not consider the merits of SPNV's complaint or of the views presented by the Netherlands Government. Instead, on August 4, 1982, the court dismissed the complaint on the ground that, notwithstanding the articles of the Treaty on which SPNV relied, as a shareholder of its U.S. subsidiaries SPNV had no standing to challenge California's practice, and also on the ground that SPNV lacked standing to raise its constitutional claims. The court further held that the suit was unripe because defendants had not finally determined the amounts of tax due. A copy of the court's opinion is annexed.

SPNV appealed to the U.S. Court of Appeals for the Ninth Circuit. The Netherlands Government filed a brief *amicus curiae* in that court stating its view that the district court's ruling was based on a misreading of the Treaty. On June 30, 1983, the court of appeals affirmed the district court's decision on both standing and ripeness grounds. A copy of the appellate opinion is annexed.

The Netherlands Government is informed that SPNV will file a petition for certiorari in the Supreme Court, seeking review of the court of appeals' decision. The Netherlands Government intends to submit a brief as *amicus curiae* urging that certiorari be granted in light of the international importance of the issues presented.

The Netherlands Government believes that the court of appeals' decision denying the standing of SPNV, a Netherlands parent company, to invoke the Treaty may

be even more damaging to the effectuation of the purposes of the Treaty than an adverse disposition on the merits would have been. The appellate court left undisturbed the district court's decision suggesting that a Netherlands company may invoke the substantive protections of the Treaty in an American court only if it engages in trade or gainful pursuit within the United States through an unincorporated branch establishment, and not if it does so through a U.S. subsidiary corporation. That ruling imports into the relevant provisions of the Treaty a limitation they do not contain. Unless reversed by the Supreme Court, the lower court decisions will frustrate the Treaty's objectives by discriminating for standing purposes against the form of investment—local incorporation—that is most frequently used by both Netherlands and U.S. parent companies, and which is specifically provided for in the Treaty.

In addition, the court of appeals' interpretation of the Supreme Court's decision in *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982), unduly limits the applicability of the Treaty. In interpreting *Sumitomo* to mean that a Netherlands company can under no circumstances have greater rights than a U.S. corporation, irrespective of the provisions of the Treaty, the court of appeals' decision ignores the existence of separate treaty provisions granting most-favored-nation treatment and conferring independent substantive rights, with respect to taxation and other matters, on Netherlands companies engaged in trade or gainful pursuit in the United States.

Moreover, two of the treaty provisions under which SPNV was denied standing—Articles I(1) and VI(3)—are not limited to taxation but protect companies of one party with respect to any governmental conduct within the other. Therefore, the pernicious effects of the court's construction would not be limited to the area of taxation. If a similar interpretation of the Treaty were adopted by Netherlands tribunals, American companies that estab-

lished subsidiaries in the Netherlands, and the subsidiaries themselves, would lose the right to invoke the Treaty's protections against unreasonable or discriminatory treatment in taxation and many other areas. As a result, important provisions of the Treaty would be almost entirely vitiated.

In his note of April 24, 1980, the Secretary of State indicated his presumption that the legal issues relating to the permissibility of the State of California's unitary tax method would be decided by U.S. courts of competent jurisdiction. The court of appeals has rendered that presumption false by denying a Netherlands company the right even to present for adjudication the issue of the compatibility of California's practice with the Treaty. And the State of California and the lower courts interpret *Sumitomo* to preclude U.S. subsidiaries from presenting claims based on the Treaty, because the subsidiaries are not "companies of" their foreign parent's domicile.

The court's additional ruling that the controversy is unripe, will, if allowed to stand, further impair the Treaty. The court indicated that federal judicial consideration of the Treaty issues should await completion of state tax proceedings in California. However, SPNV is not entitled to participate in those proceedings, and the State of California takes the position that the U.S. subsidiaries have no standing to assert rights under the Treaty in those proceedings. Therefore, the state proceedings do not offer a means of vindicating the rights SPNV seeks to assert under the Treaty. To deny prompt adjudication of the Treaty issues is especially inappropriate where unitary taxation by California and other States has aroused vigorous protests from the Netherlands and other foreign governments, thus disturbing U.S. foreign relations. *See Container Corp. v. Franchise Tax Bd.*, No. 81-523, slip op. at 6-7 n.4 (June 27, 1983) (Powell, J., dissenting). In *Container*, the three dissent-

ing justices expressly stated that the constitutionality of California's unitary tax formula could not be defended as applied to a foreign-based multinational. The five majority justices expressly left this point open when they held the tax constitutional as applied to a U.S.-based multinational. The lower court decisions in *SPNV*, however, bar SPNV from raising either its constitutional claims or its treaty claims.

In the light of these developments, the Netherlands Government strongly urges the U.S. Government to support SPNV's petition for certiorari, and to express to the Supreme Court its views on the aspects of both standing and ripeness. Not only will this help to avoid the confusion that arose from the silence of the U.S. Government in the case of Container Corporation before the Supreme Court, but also the opinion of both States parties to the treaty on the question of the ius standi may well be of great value to the Supreme Court.

The Ambassador of the Netherlands avails himself of this opportunity to renew to the Secretary of State the assurances of his highest consideration.

Washington, D.C.
September 15, 1983

ANNEX B

PERTINENT PROVISIONS OF NETHERLANDS FCN TREATY[1]

Article I(1)

"Each Party shall at all times accord fair and equitable treatment to the nationals and companies of the other Party, and to their property, enterprises and other interests."

Article VI(3)

"Neither Party shall take unreasonable or discriminatory measures that would impair the rights or interests within its territories of nationals and companies of the other Party, whether in their capital, or in their enterprises and the property thereof, or in the skills, arts or technology which they have supplied."

Article VII(1)

"Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activity for gain (business activities) within the territories of the other Party, whether directly or by agent or through the medium of any form of lawful juridical entity. Accordingly, such nationals and companies shall be permitted within such territories: (a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their busi-

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[1] Source: Treaty of Friendship, Commerce and Navigation, Mar. 27, 1956, United States-Netherlands, 8 U.S.T. 2043, T.I.A.S. No. 3942.

ness; (b) either directly or indirectly through one or more intermediaries, to organize companies under the general company laws of such other Party and to acquire the controlling interest in companies of such other Party; (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other Party."

Article XI

"1. Nationals of either Party residing within the territories of the other Party, and nationals and companies of either Party engaged in trade or other gainful pursuit or in scientific, educational, religious or philanthropic activities within the territories of the other Party, shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of such other Party, more burdensome than those borne by nationals and companies of such other Party.

"2. With respect to nationals of either Party who are neither resident nor engaged in trade or other gainful pursuit within the territories of the other Party, and with respect to companies of either Party which are not engaged in trade or other gainful pursuit within the territories of the other Party, it shall be the aim of such other Party to apply in general the principle set forth in paragraph 1 of the present Article.

"3. Nationals and companies of either Party shall in no case be subject, within the territories of the

other Party, to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals, residents and companies of any third country.

"4. In the case of companies and of non-resident nationals of either Party engaged in trade or other gainful pursuit within the territories of the other Party, such other Party shall not impose or apply any tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of companies organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

"5. Each Party reserves the right to: (a) extend specific tax advantages on the basis of reciprocity; (b) accord special tax advantages by virtue of agreements for the avoidance of double taxation or the mutual protection of revenue; and (c) accord to its own nationals and to residents of continguous countries more favorable exemptions of a personal nature with respect to income and inheritance taxes than are accorded to other non-resident persons."

ANNEX C

ARTICLES OF MODERN FCN TREATIES COMPARABLE TO ARTICLES OF NETHERLANDS FCN TREATY RELIED ON BY SPNV [1]

	Netherlands FCN Treaty Articles					
	I(1)	VI(3)	VII(1)	XI(1)	XI(3)	XI(4)
Belgium	1	4(2)	6	9(1)	9(3)	9(4)
Denmark	I	VI(4)	VII, VIII	XI(1)	XI(3)	XI(4)
Ethiopia	VIII(1)	VIII(1)	VIII	X(1)	X(1)	X(3)
France	I	IV(1)	V(1)	IX(1)	IX(2)	IX(4)
W. Germany	I(1)	V(3)	VII(1)	XI(1)	XI(3)	XI(4)
Greece	I	VIII	XII, XIII	XVI(1)	XVI(2)	XVI(3)
Iran	IV(1)	IV(1)	IV(4)	VI(1)	VI(1)	VI(3)
Ireland	V	V	VI	IX(1)(b)	IX(1)(a)	IX(2)
Israel	I	VI(4)	VII(1)	XI(1)	XI(3)	XI(4)
Italy	—	Supp. art. I	II, III	IX(1)(b)	IX(1)(a)	IX(2)
Japan	—	V(1)	VII(1)	XI(1)	XI(3)	XI(4)
S. Korea	I	VI(3)	VII(1)	XI(1)	XI(3)	XI(4)
Luxembourg	I	IV(2)	VI(1)	X(1)	X(3)	X(4)
Nepal	—	—	—	—	—	—
Nicaragua	I	VI(3)	VII(1)	XI(1)	XI(3)	XI(4)
Oman	IV(1)	IV(1)	V	VII(1)	VII(1)	VII(3)
Pakistan	I	VI(3)	VII(1)	XI(1)	XI(3)	XI(4)
Taiwan [2]	—	—	III, IV	X(1)	X(2)	X(1)
Thailand	III(1)	III(1)	IV	VI(1)	VI(1)	VI(3)
Togo	IV(1)	IV(1)	V	VII(1)	VII(1)	VII(3)
Vietnam [3]	IV(1)	IV(1)	V	VII(1)	VII(1)	VII(3)
Yemen	—	—	—	—	—	—

[1] The full citation for each treaty or international agreement referred to in the table is contained at the end of this annex.

[2] Signed in 1946 with the Republic of China, this treaty has been continued in force by Taiwan Relations Act § 4(c), 22 U.S.C. § 3303(c) (Supp. V.1981).

[3] This agreement was in force between the United States and the Republic of Vietnam (South Vietnam). As of January 1, 1983, its status was under review by the U.S. Government. *See* U.S. Department of State, *Treaties in Force* 188 (Jan. 1, 1983).

Sources:

1. Treaty of Friendship, Establishment and Navigation, Feb. 21, 1961, United States-Belgium, 14 U.S.T. 1284, T.I.A.S. No. 5432.

2. Treaty of Friendship, Commerce and Navigation, Oct. 1, 1951, United States-Denmark, 12 U.S.T. 908, T.I.A.S. No. 4797.

3. Treaty of Amity and Economic Relations, Sept. 7, 1951, United States-Ethiopia, 4 U.S.T. 2134, T.I.A.S. No. 2864.

4. Convention of Establishment, Protocol, and Declaration, Nov. 25, 1959, United States-France, 11 U.S.T. 2398, T.I.A.S. No. 4625.

5. Treaty of Friendship, Commerce and Navigation, Oct. 29, 1954, United States-Federal Republic of Germany, 7 U.S.T. 1839, T.I.A.S. No. 3593.

6. Treaty of Friendship, Commerce and Navigation, Aug. 3, 1951, United States-Greece, 5 U.S.T. 1829, T.I.A.S. No. 3057.

7. Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, United States-Iran, 8 U.S.T. 899, T.I.A.S. No. 3853.

8. Treaty of Friendship, Commerce and Navigation, Jan. 21, 1950, United States-Ireland, 1 U.S.T. 785, T.I.A.S. No. 2155.

9. Treaty of Friendship, Commerce and Navigation, Aug. 23, 1951, United States-Israel, 5 U.S.T. 550, T.I.A.S. No. 2948.

10. Treaty of Friendship, Commerce and Navigation, Feb. 2, 1948, United States-Italy, 63 Stat 2255, T.I.A.S. No. 1965, Supp. 12 U.S.T. 131, T.I.A.S. No. 4685.

11. Treaty of Friendship, Commerce and Navigation, Apr. 2, 1953, United States-Japan, 4 U.S.T. 2063, T.I.A.S. No. 2863.

12. Treaty of Friendship, Commerce and Navigation, Nov. 28, 1956, United States-Republic of Korea, 8 U.S.T. 2217, T.I.A.S. No. 3947.

13. Treaty of Friendship, Establishment and Navigation, Feb. 23, 1962, United States-Luxembourg, 14 U.S.T. 251, T.I.A.S. No. 5306.

14. Agreement Respecting Friendship and Commerce, Apr. 25, 1947, United States-Nepal, 61 Stat. 2566, T.I.A.S. No. 1585.

15. Treaty of Friendship, Commerce and Navigation, Jan. 21, 1956, United States-Nicaragua, 9 U.S.T. 449, T.I.A.S. No. 4024.

16. Treaty of Amity, Economic Relations and Consular Rights, Dec. 20, 1958, United States-Oman, 11 U.S.T. 1835, T.I.A.S. No. 4530.

17. Treaty of Friendship and Commerce, Nov. 12, 1959, United States-Pakistan, 12 U.S.T. 110, T.I.A.S. No. 4683.

18. Treaty of Friendship, Commerce and Navigation, Nov. 4, 1946, United States-Republic of China, 63 Stat. 1299, T.I.A.S. No. 1871.

19. Treaty of Amity and Economic Relations, May 29, 1966, United States-Thailand, 19 U.S.T. 5843, T.I.A.S. No. 6540.

20. Treaty of Amity and Economic Relations, Feb. 8, 1966, United States-Togo, 18 U.S.T. 1, T.I.A.S. No. 6193.

21. Treaty of Amity and Economic Relations, Apr. 3, 1961, United States-Republic of Vietnam, 12 U.S.T. 1703, T.I.A.S. No. 4890.

22. Agreement Respecting Friendship and Commerce, May 4, 1946, United States-Yemen, 60 Stat. 1782, T.I.A.S. No. 1535.